UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 32

SELIX ACQUISITION LLC, D/B/A/ SELIX FORMALWEAR (Hayward, California)

Employer[1]

And

MARTHA P. BAEZA, an Individual Case 32-RD-1568

Petitioner

and

INTERNATIONAL LONGSHORE AND WAREHOUSE UNION LOCAL 6, AFL-CIO

Union[2]

REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION

Selix Acquisition LLC, d/b/a Selix Formalwear, herein called the Employer, is engaged in the business of rentals and sales of tuxedos and related accessories. Its principal office is in Hayward, California. The Union represents a collective-bargaining unit consisting of the Employer's warehouse, production, and maintenance employees, including but not limited to working foremen, floor ladies, truck drivers, laundry pressers, alteration employees, breakdown employees, shoe production employees, shipping/receiving

[1] The Employer's name appears as amended at the hearing.

[2] The Union's name appears as amended at the hearing.

employees, quality control inspectors, display persons and other employees performing similar functions.[3]

On December 30, 2008, the Petitioner herein, Martha Baeza, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to decertify the Union. A hearing officer of the Board held a hearing on January 13 and 14, 2009. The Employer and the Union have filed post-hearing briefs.

The Union contends that the decertification petition should be dismissed because Baeza, a working foreman, is a statutory supervisor within the meaning of Section 2(11) of the Act, and, as such, her supervisory status renders her ineligible to file a decertification petition.[4] The Union contends that Baeza is a statutory supervisor because she has the authority to assign and direct the production employees in the performance of their work, she can effectively recommend employees for hire, she evaluates the job performance of production employees, she reports inadequate performers for discipline, she trains new employees, and she has the authority to grant time off and offer overtime work to production employees. The Union does not contend, nor does the record reflect, that Baeza has any authority to fire, transfer, layoff, suspend, recall, promote, set wages or wage increases, resolve grievances or

[3] In 1996, in Case 32-RC-4009, the Union was certified as the collective-bargaining representative of the bargaining unit employees of the predecessor employer, Dick Bruhn, Inc. d/b/a Selix Formalwear. That same unit description was set forth in the parties' collective-bargaining agreement in effect from August 1, 1996 to April 28, 2000, and as extended by memoranda through March 7, 2008.

[4] It is well-established that the filing of a decertification petition by a statutory supervisor is grounds for dismissal. See *Rose Metal Products*, 289 NLRB 1153, 1153 (1988) and *Triality, Inc., d/b/a United Iron Works*, 290 NLRB 98, 98 (1988).

effectively recommend such actions.[5] The Employer contends that Baeza does not possess statutory authority in her position as working foreman.

I have carefully considered the evidence and arguments presented by the parties on this issue. As discussed below, I conclude that Baeza is not a statutory supervisor, and I shall include her in the unit found appropriate herein. Among other things, the uncontradicted evidence establishes that she does not possess the independent judgment necessary to establish that she is a statutory supervisor. There are approximately 22 employees in the unit.

FACTS:

Background

As set forth above, the Employer is engaged in preparing orders for rentals and sales of formalwear in its warehouse production operation. Although the record does not completely detail its recent corporate changes, it is clear that as a result of bankruptcy proceedings, Dick Bruhn, Inc. d/b/a Selix Formalwear, herein called the predecessor employer, was acquired by the Employer in January 2008.

Martha Baeza was hired by the Employer as a working foreman in production on or about January 29, 2008, when it took over operations from the predecessor employer at the Hayward facility. Baeza had worked in production for the predecessor employer for approximately ten years, and had been promoted to a working foreman on or about March 21, 2006. She is the only working foreman employed by the Employer and has historically been included as a member of the bargaining unit. She is an hourly

[5] At hearing, the Union also claimed that there is a contract bar to processing this petition. Despite being given the opportunity to present evidence in support of this claim during the hearing, the Union declined and presented no evidence to support its position. Additionally, the Union did not raise this argument in its brief. Accordingly, I find there is no contract bar to this proceeding.

employee, earning $14.02 per hour, and she is eligible for overtime pay. She is also eligible for the same holidays and health benefits as the bargaining unit employees. She reports to Plant Manager Patrick Joson and Assistant Plant Manager Salvador Amaral, as do bargaining unit drivers. There are approximately 17 production employees who prepare tuxedos to fill customer orders and perform tasks such as laundry, ironing and dry-cleaning.

As the working foreman, Baeza is responsible for ensuring that the daily production work orders are completed and addressing production issues that arise during her shift. However, as will be discussed in full below, she is not held accountable by the Employer for the quality or correctness of any work other than her own. Baeza performs production work during the majority of her shift and may spend an entire day involved in such work. However, throughout her shift, she monitors production and communicates with Joson and Amaral, via radio and in person, regarding production matters. She advises them of any problems in production and calls them for approval to reassign employees to different production areas and/or to work overtime in order to complete the daily work orders.

Baeza's shift runs from 10:00 a.m. to 7:30 p.m., Monday through Friday, however, she remains at work until each day's orders are completed. She is responsible for turning off the boilers, computers and lights in her area before she leaves. She also works approximately one to two Saturdays per month and she often works overtime, along with other production employees, in order to complete the day's orders. Baeza also performs quality control work and reviews the completed orders to make sure that they have been completed correctly. She estimates that she spends roughly five hours

of her day performing production work, one hour per day performing quality control work, and one hour throughout each day talking with Joson and Amaral regarding production matters and facilitating the rotation of employees in the production area.

The production work is done on a rotational basis. The record does not describe precisely how the rotation functions, however, it appears that production employees are moved to different production areas as needed to complete the daily orders. Joson prepares the employees' schedules and work orders, as well as generally making employees' initial work assignments before Baeza begins her shift. Baeza's role in the production rotation of other employees seems to be limited to notifying Joson that his initial employee assignments for the day require adjustment. Such adjustments may only be enacted by Baeza, as set forth above, with his prior approval. With regard to the rotation, Baeza testified that Joson provides her with copies of the employees' schedules and the daily work orders so that she is aware of who is working and what needs to be done each day. She maintains the paperwork in a locked file cabinet, located in a small office area under the stairs where the facility's coffee supplies are stored which can be accessed by both managers. She estimates that she spends her 15 minute break in this area each day and otherwise only uses it to access the filing cabinet.

Analysis:

The traditional test for determining supervisory status is: (1) whether the employee has the authority to engage in, or effectively recommend, any of the 12 criteria listed in Section 2(11) of the Act; (2) whether the exercise of such authority requires the use of independent judgment; and (3) whether the employee holds the

authority in the interest of the employer. *NLRB v. Health Care & Retirement Corp*., 511 U.S. 571, 573-574 (1994). *See Oakwood Healthcare, Inc.*, 348 NLRB 686 (2006); *Croft Metals, Inc.,* 348 NLRB 717 (2006); and *Golden Crest Healthcare Center*, 348 NLRB 727 (2006). Supervisory status cannot be established solely by secondary indicia, such as the perception of supervisory status, attendance at meetings, or participation in training classes. While the Board has examined secondary factors not set forth in Section 2(11) of the Act, these factors, in the absence of statutory indicia, are insufficient to establish supervisory status. *Ken-Crest Services,* 335 NLRB 777, 779 (2001).

The Board has frequently warned against construing supervisory status too broadly because an employee deemed to be a supervisor loses the protection of the Act. See, e.g., *Vencor Hospital - Los Angeles*, 328 NLRB 1136, 1138 (1999); *Bozeman Deaconess Hospital*, 322 NLRB 1107, 1114 (1997). The burden of proving supervisory status lies with the party asserting that such status exists. *Oakwood Healthcare, Inc.,* supra, at 694*; NLRB v. Kentucky River Community Care, Inc*., 532 U.S. 706, 711-712 (2001). Supervisory status must be established by a preponderance of the evidence and lack of evidence is construed against the party asserting supervisory status. *Oakwood Healthcare, Inc.,* supra, at 694; Dean *& Deluca New York, Inc.,* 338 NLRB 1046, 1048 (2003); *Michigan Masonic Home*, 332 NLRB 1409 (2000). "[W]henever the evidence is in conflict or otherwise inconclusive on particular indicia of supervisory authority, [the Board] will find that supervisory status has not been established, at least on the basis of those indicia." *Phelps Community Medical Center*, 295 NLRB 486, 490 (1989). Mere inferences or conclusionary statements, without detailed, specific

evidence of independent judgment, are insufficient to establish supervisory authority. *Golden Crest Healthcare Center*, supra, at 731; *Avante at Wilson*, 348 NLRB 1056, 1057 (2006); *Sears, Roebuck & Co*., 304 NLRB 193, 194 (1991).

As discussed below, I conclude that the record evidence does not establish that Baeza exercises any statutory authority. As noted above, she is an hourly employee, is eligible for overtime pay, and receives the same benefits as unit employees. There is no evidence that she earns a higher hourly rate than other bargaining unit employees, or that she receives any bonuses or benefits not otherwise available to other bargaining unit employees. While she regularly works overtime to complete the daily work orders, the record establishes that Plant Manager Joson and Assistant Plant Manager Amaral routinely authorize other production employees to work overtime in order to complete the daily work orders and Baeza testified that she works overtime alongside other production employees in order to complete that work. While she has an office area, which other bargaining unit members appear not to have, the record establishes that she uses the area primarily to store paperwork and that virtually all of her working time is spent in the production area with the other bargaining unit employees.

The record reflects that Baeza spends the majority of her working time performing production and quality control work, all of which is bargaining unit work. While she oversees the production area and communicates with management regarding production, she is at best, a lead person whom the Employer has not vested with "genuine management prerogatives" and who lacks true supervisory authority. *Quadrex Environmental Co.,* 308 NLRB 101, 102 (1992) (citing *S. Rep. No. 105, 80th Cong.,* 1 Sess. 4 (1947)). In this regard, the record establishes that Baeza does not

possess supervisory authority to schedule employees, release employees, grant overtime or time off or effectively recommend such actions. Instead, the record clearly establishes that only Joson and Amaral are authorized to take such actions. As noted earlier, Joson prepares the employees' schedules and there is no evidence that Baeza has any involvement in setting the employees' schedules or shifts, or any responsibility to monitor or report employee attendance or tardiness. While she testified that she has relayed employee requests to take time off or leave early to Joson, she is not involved in the decision to grant or deny such requests. Similarly, while she informs Joson or Amaral when the day's work orders will not be completed and overtime work is needed, the record clearly establishes that only they are authorized to grant overtime and she cannot independently authorize employees to work overtime. There is no evidence that she has ever authorized employee overtime or effectively recommended such action[6] and the record reflects that there would be little necessity for her to grant overtime in the absence of a manager since there is a manager present at the facility at virtually all times that she is working.[7]

[6] Baeza testified that she asked the Employer's President, Alan Cupples, to allow her and several other employees time off to attend the hearing in this matter and asked if they could be paid for the time they would normally be at work. The Union urges that this evidence supports the conclusion that Baeza has the authority to grant employees time off and to authorize paid time off. I find this argument wholly unpersuasive. As an initial matter, there is no evidence in the record that her request has been granted or that the employees who attended the hearing will be paid. Indeed, Baeza testified that she asked Cupples if he would approve paid time off for attendance at the hearing, but he had not answered her and she did not know if she or the others would be compensated for their time spent at the hearing. Also, there is no evidence that in making this request, her action constituted anything more than relaying the employees' requests, in the same manner that she regularly relays other employees' requests for time off to the Employer. Finally, she testified that the request for time off and pay for employees to attend the representation hearing was something that had never happened before and, as such, is not reflective of her day-to-day duties or general authority within the workplace and does not support a finding of supervisory status.

[7] Joson begins work prior to Baeza's 10:00 a.m. start time and Amaral remains at the facility until after she leaves. She also testified that on very rare occasions, both Joson and Amaral have left the facility prior to the completion of the day's orders and estimates that she has only been at work a few times when there has been no manager present.

Similarly, there is no evidence that Baeza has any authority to discipline employees, that she has ever recommended that any employee be disciplined or otherwise exercised any authority that has lead to discipline of employees without the independent investigation or review by Joson or Amaral. *Franklin Home Health Agency*, 337 NLRB 826, 830 (2002); *Children's Farm Home*, 324 NLRB 61 (1997). While she testified that she may verbally correct an employee that is not performing his or her task correctly, there is no evidence that these corrections constitute any form of discipline or that such verbal corrections are even reported to Joson or Amaral. Baeza testified that she relays production problems, including slow or underperforming employees, to Joson, but she has never independently counseled a slow employee or recommended any disciplinary action be taken against any employee. Indeed, there is no evidence that her production reports to Joson and Amaral have ever led to the investigation or discipline of a single employee. To the contrary, Baeza testified that she is not aware of any employee being disciplined as a result of her reports, she has never recommended that any employee be disciplined and has never been involved in the issuance of discipline to any employee. Moreover, the record does not contain any evidence of discipline either issued by her or resulting from her recommendation and does not refer to even a single instance of employee discipline related to her counseling of employees or reporting of production problems to Joson or Amaral.

Contrary to the Union's claims, there is no evidence that Baeza has any authority to hire or effectively recommend the hiring of employees. The Union relies upon her testimony that she recommended the hiring of her mother, sister and two other unnamed applicants to support its claim that she has hiring authority. However, the

record reflects that the predecessor employer also hired her mother and sister and there is no evidence regarding when she recommended that her mother, sister and the two unnamed applicants be hired or to whom that recommendation was actually made. Moreover, Baeza testified that the extent of her participation in the hiring process was to advise her family members to obtain applications when hiring was increased for the high season and to suggest that they be hired and that such actions are no different than the recommendations of other bargaining unit members who have referred friends or acquaintances to apply for work during the high season and recommended that the Employer hire them. Also, there is no evidence that the Employer hired any applicants recommended by her without independent review of the applications. Indeed, the record reflects that the Employer did not retain her sister following the end of high season and there is no evidence that her desires regarding the employment of her family members had any bearing on the Employer's decision to hire and/or retain them. Finally, Baeza testified that she has never reviewed applications, interviewed applicants, been asked by the Employer for her recommendations on potential hires, or otherwise participated in the hiring process in any way.

I also find, contrary to the Union's claims, that Baeza's role in assigning work does not demonstrate statutory supervisory status. The Board's recent decisions in *Oakwood* and *Golden Crest Healthcare Center* provide the framework for determining whether a working foreman assigns work to employees using the requisite degree of independent judgment. In *Oakwood*, the Board explained that assignment means designating an employee to a place (such as a location, department, or wing), appointing an individual to a time (such as a shift or overtime period), or giving

significant overall duties as opposed to discrete tasks. *Oakwood Healthcare, Inc.,* 348 NLRB 686, 689 (2006); *Golden Crest Healthcare Center, 348* NLRB 727, 728-729 (2006).

As an initial matter, the record reflects that Joson, not Baeza, makes the weekly schedules, assigns employees to their particular shift and generally assigns employees to their initial work assignments each morning. While she is involved in reassigning employees to different production tasks, there is no evidence that such reassignments have any significant impact on employees overall duties or constitute anything more than a change in discrete tasks. Moreover, the authority to make an assignment, by itself, does not confer supervisory status. To establish supervisory authority, the putative supervisor must also use independent judgment when making such assignments. This means that the individual must exercise authority that is free from the control of others, and make a judgment that requires forming an opinion or evaluation by discerning and comparing data. The touchstone is the degree of discretion exercised by the purported supervisor, not whether the discretion involves technical or professional judgment. In *Oakwood,* the Board recognized the spectrum between situations involving little discretion where there are detailed instructions for the actor to follow from situations where the actor is wholly free from constraints. While judgment is not independent if it is dictated or controlled by detailed instructions, it is independent where the policy allows for discretionary choices. Additionally, the judgment must "rise above the merely routine or clerical" for it to be truly supervisory, even if it is made free of control of others and involves forming an opinion by discerning and comparing data. *Id.,* at 693.

Applying this framework, it is clear that Baeza does not use independent judgment in reassigning employees to different production tasks or rotating employees during production. Thus, to the limited extent that she makes assignments, these assignments do not require the degree of independent judgment required by Section 2(11) of the Act to support a finding of supervisory status. In this regard, she testified that she must obtain the permission of Joson or Amaral before reassigning any production employee to another task. Moreover, even assuming that she occasionally reassigned employees based on her own discretion, there is no evidence that the reassignment of production tasks involves any individualized assessments of employees' skill sets and weighing of these skills against the Employer's particular needs. To the contrary, the record suggests that any transfers are based upon common sense efficiencies and routine job priorities set by the Employer to complete job orders. In *Oakwood,* the Board cited the charge nurse's assignment of a nurse to a patient as an example of independent judgment in the health care context where the charge nurse weighs the individualized condition and needs of a patient against the skill or special training of available nursing personnel. The Board observed that the discretion exercised in "matching a nurse with a patient may have life and death consequences." *Id.,* at 695. This example underscores the absence of meaningful discretion on the record facts of this case. Moreover, decisions made on the basis of well-known and limited skills, such as ability to iron or dry clean, are simply a routine matching of skills to requirements and do not require meaningful discretion. *Franklin Home Health Agency*, 337 NLRB 826, 831 (2002); *Clark Machine Corp*., 308 NLRB 555, 555-556 (1992); *St. Vincent Hospital*, 344 NLRB 586, 595-596 (2005).

In sum, I find that Baeza does not assign work using independent judgment and that the Employer's policies and procedures related to the approval of such reassignments limit the judgment to such a degree that it falls short of that required for supervisory status.

I also find that Baeza does not use independent judgment to responsibly direct the work of production employees. In *Oakwood,* the Board explained that direction means the putative supervisor has employees working "under" him or her and the authority to instruct those employees on what work needs to be done and who will do it. *Oakwood,* supra, at 691. Such direction is not supervisory, however, unless it is also done "responsibly," i.e., if the putative supervisor is held accountable for the performance of other employees. To establish accountability, the party asserting supervisory status has to show both that the putative supervisor has "the authority to take corrective action" and can potentially receive "adverse consequences" for the performance errors of other employees. *Oakwood*, supra, at 691-692. For the adverse consequences to establish "responsible direction," the consequences must flow from the other employees' performance failures, not from the purported supervisor's own performance failure. Finally, the purported supervisor must also exercise independent judgment in responsibly directing the work of the employees under him.

Here, the evidence fails to establish that Baeza's direction of production employees is either responsible or requires independent judgment. As discussed above, the direction of employees to perform certain tasks is determined by Plant Manager Joson and Assistant Plant Manager Amaral, not Baeza; she merely relays their directions to the other employees. Moreover, there is no evidence that she is

responsible or accountable for the performance problems of the other production employees. In this regard, she testified that she is not subject to discipline if other production employees do not perform their assigned tasks properly, she is not accountable for other employees' substandard work and she has only been counseled by the Employer regarding her own production mistakes. Accordingly, the Union has not met its burden of showing that she "responsibly directs" where there is no prospect of adverse consequences for the putative supervisor.

The Union has also failed to establish that Baeza directs the work of the production employees on a regular or meaningful basis. While she testified that she can verbally correct a production employee if they are improperly performing a task, this is not sufficient to confer supervisory status. As an initial matter, the production employees' duties are well-known to them and are performed outside the presence of Baeza, who spends the majority of her day performing her own production work. Also, she testified that the reassignment of a production employee generally takes less than a minute because the employees know what needs to be done and how to do it.[8] While she does correct employees' work, as discussed above, there is no evidence that these corrections made by her or observations of production employees' work have ever been used to discipline employees or initiate the disciplinary process. The mere ability to

[8] While Baeza testified that she trains new employees, this testimony lacks specificity and is not compelling evidence that she responsibly directs the work of new employees on a regular or meaningful basis. In this regard, there is only a conclusionary statement that if she reassigns a new employee she trains them. There is insufficient testimony regarding the circumstances, frequency, or types of instructions she gives to new employees, whether she is the only person that trains new employees or what other training they may receive and from whom. Also, the record clearly establishes that she is not held accountable for the work of any employees, which would include new employees. Thus, the record evidence is inconclusive with regard to her direction of new employees' work, and the Union has not met its burden of proof to establish that her direction of employees is done responsibly or requires independent judgment. *Phelps Community Medical Center*, 295 NLRB 486, 490 (1989).

point out tasks that the employees have not performed properly in accordance with the Employer's criteria to make sure the employees perform their duties, and to call their attention to a particular task that has not been performed properly, does not require independent judgment. *Beverly Health and Rehabilitation Services, Inc.,* 335 NLRB 635, 669 (2001)*; Evangeline of Natchitoches, Inc.,* 323 NLRB 223, 223-224 (1997). As noted earlier, the work performed by the production employees is limited, repetitive, and well-known to the employees, thereby reducing the degree of independent judgment in directing such tasks. *Franklin Home Health Agency*, 337 NLRB 826, 831 (2002); *Beverly Health and Rehabilitation Services, Inc.,* supra., at 669-670. Moreover, there is no evidence that her review of employees' work is any different than the review performed by the non-supervisory, bargaining-unit quality control inspectors. Accordingly, I conclude that any judgment used by Baeza to direct the production employees is curtailed by the Employer's established policies and procedures, and the tasks are of such a routine and repetitive nature, that the degree of judgment used to direct such tasks falls short of the independent judgment required for supervisory status. *Oakwood Healthcare, Inc.*, 348 NLRB 686, 692-694 (2006); *NLRB v. Kentucky River Community Care*, 532 U.S. 706 (2001); *Chevron Shipping Co.*, 317 NLRB 379, 381 (1995).

CONCLUSIONS AND FINDINGS

Based on the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.

2. The parties stipulated, and I find, that the Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.

3. The parties stipulated, and I find, that the Union is a labor organization within the meaning of the Act.

4. The Union claims to represent certain employees of the Employer, and a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time warehouse, production, and maintenance employees employed by the Employer at its 22423 Foothill Blvd., Hayward, California Facility, including but not limited to working foremen, floor persons, truck drivers, laundry pressers, alteration employees, breakdown employees, shoe production employees, shipping/receiving employees, quality control inspectors, display persons and other employees performing similar functions; excluding all other employees, office clerical employees, managerial employees, guards, and supervisors as defined in the Act.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by **International Longshoremen and Warehouse Union Local 6, AFL-CIO.** The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately prior to the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc*., 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must by received in Region 32, 130 Clay Street, Room 300N, Oakland, California, 94612-5211, on or before **January 30, 2009.** No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted to the Regional Office by electronic filing through the Agency's website, **www.nlrb.gov**[9]**,** by mail, by hand or courier delivery, or by facsimile transmission at (510) 637-3315. The burden of establishing the timely filing and receipt of the list will continue to be placed upon the sending party.

Since the list will be made available to all parties to the election, please furnish a total of **three** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact Region 32.

[9] To file the eligibility list electronically, go to www.nlrb.gov and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu. When the E-File page opens, go to the heading **Regional, Subregional and Resident Offices** and click on the "File Documents" button under that heading. A page then appears describing the E-Filing terms. At the bottom of this page, check the box next to the statement indicating that the user has read and accepts the E-Filing terms and click the "Accept" button. Then complete the filing form with information such as the case name and number, attach the document containing the eligibility list, and click the Submit Form button. Guidance for E-filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located under "E-Gov" on the Board's website, www.nlrb.gov.

Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices of Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the 12:01 a.m. of the day of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board,

addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EST on **February 6, 2009**. The request may be filed electronically through the Agency's website, www.nlrb.gov[10], but may not be filed by facsimile.

Dated: January 23, 2009

/s/ Alan B. Reichard
Alan B. Reichard, Regional Director
National Labor Relations Board
Region 32
1301 Clay Street, Suite 300N
Oakland, CA 94612-5211

32-1347

[10] To file the request for review electronically, go to www.nlrb.gov and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu. When the E-File page opens, go to the heading **Board/Office of the Executive Secretary** and click on the "File Documents" button under that heading. A page then appears describing the E-Filing terms. At the bottom of this page, check the box next to the statement indicating that the user has read and accepts the E-Filing terms and click the "Accept" button. Then complete the filing form with information such as the case name and number, attach the document containing the request for review, and click the Submit Form button. Guidance for E-filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located under "E-Gov" on the Board's website, www.nlrb.gov.